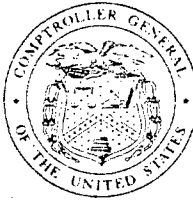


DECISION



12814 ^{Transp.} mr. Lieberman
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196025

DATE: February 11, 1980

MATTER OF: Fred Anderson ~~DLG-03887~~

DIGEST:

[Protest Alleging IFB Specifications were Defective and Unduly Restrictive]

1. Protester who did not submit bid is nonetheless an interested party under GAO Bid Protest Procedures where protest, filed prior to bid opening, alleges that IFB specification deficiencies made it impossible for protester to properly prepare and submit bid.
2. IFB specifications which indicate that agency requires provision of mess attendant services for a bare base field dining hall with two "service modules" are sufficiently specific and accurate for proper bid preparation even if unit contemplated may also be characterized as a double bare base field dining hall, since in either instance services required are readily ascertainable and essentially identical.
3. Agency is not required to provide for an extended "lead time" in order to facilitate participation of an as yet unformed company lacking essential inventory stockpile.
4. Award pending protest legally permissible under provision of Defense Acquisition Regulation § 2.407.8(b)(3).

DLG-03888 Fred Anderson (Anderson) protests the award by the Air Force of a contract under invitation for bids (IFB) No. F41687-79-B-0020, a small business set-aside for food service attendant services at Bergstrom Air Force Base. Anderson alleges that the IFB specifications were defective and unduly restrictive; that

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inadequate start-up lead time was provided; that bids were opened and award made in disregard of a protest received prior to award; and that award was made to a contractor who was not the lowest bidder.

As a threshold issue, the Air Force contends that Anderson is not entitled to have this protest considered by our Office because he is not an interested party under GAO Bid Protest Procedures, 4 C.F.R. 20(a) (1979). We believe that Anderson is an interested party.

At the time he filed this protest, Anderson was employed as a project manager for Tripod Inc. (Tripod), the incumbent contractor. Tripod, a large business firm, did not submit a bid nor did it file a protest in this matter; Anderson did not make any representation that his protest was filed on behalf of Tripod. On the contrary, Anderson has made it clear that he is not protesting on his former employer's behalf.

Anderson asserts that he was "interested in forming his own company to bid for this contract," and that he had been encouraged to do so by the contracting officer. Anderson did not, however, pursue this intention and did not submit a bid. Instead, he remained an employee of the incumbent until just prior to bid opening and shortly thereafter left the state to take a position as an employee of another firm.

It is well established that a protester need not necessarily submit a bid in order to be an interested party to a protest. Cardion Electronics, 58 Comp. Gen. 591 (1979), 79-1 CPD 406. Rather, we consider the nature of the issues raised in the protest and the direct or indirect benefit or relief sought by the protester. ABC Management Services, Inc., 55 Comp. Gen. 397, 399 (1975), 75-2 CPD 245. The gist of Anderson's protest, which was filed prior to bid opening, is that the IFB specifications were defective in a manner which precluded him from properly preparing his bid. Under these circumstances

Anderson's interests were sufficiently affected to warrant our Office's consideration of the protest.

Anderson's major allegation centers on his contention that the IFB specifications gave the erroneous and misleading indication that services for a single bare base field dining hall with one kitchen were being solicited when, in fact, a double bare base field dining hall with two kitchens is planned.

Anderson raised this objection orally to the contracting officer 5 days prior to bid opening. When the specifications were not revised, and bid opening was not postponed, Anderson filed this protest with our Office and with the agency immediately prior to bid opening.

The Air Force contends that the specifications properly call for mess attendant services to be performed at the bare base field dining hall, and do not indicate a single hall with a single kitchen. Rather, the Air Force contends that the listing under attachment C of the IFB, entitled "Fixtures, Facilities and Equipment," reflects two modules in that it indicates two hot water heaters, two ovens, two grills, two range hoods, two dishwashing machines, and the operation hours indicate two serving lines. The Air Force also notes that in response to these IFB specifications 24 bids were submitted, of which seven were nonresponsive, due only to failure to acknowledge receipt of amendments. None questioned the specifications.

In our review of the IFB specifications we find the Air Force position to be substantially correct. While only a bare base field dining hall is specified, the equipment listing and other portions of the solicitation reasonably indicates the services required. For example, the solicitation provides for services for a specified number of meals, to a specified number of servicemen at two serving lines. We fail to see how the fact that the facility might be characterized as a double bare base field dining hall with two kitchens, rather than as a single bare base field dining hall with two

service modules would substantially affect a bidder's calculations. The specifications are sufficiently specific and accurate to provide the bidders with a reasonable common basis on which to prepare their bids and have them evaluated, and are therefore not legally objectionable. See Telektro-Mek, Inc., B-190653, April 13, 1979, 79-1 CPD 263; 44 Comp. Gen. 529, 532 (1965).

The protester also alleges that insufficient lead time was allowed to permit full and free competition, and that the specifications effectively allow only a 1-week "start-up" period. Specifically he asserts that this penalizes contractors such as himself, who do not have stockpiles of necessary items with which to commence performance. The Air Force points out that the IFB was initially issued with a 30-day bidding period, and the final amendment allowed 25 days. These time periods do not appear unreasonably short, and they fulfill the requirements of Defense Acquisition Regulation (DAR) § 1-1003.2 (1976 ed.). Furthermore, we are not aware of any legal requirement that an agency tailor its award timetable or that there be minimum "start-up" allowances to facilitate the formation and take off of a new company by an entrepreneur attempting to accomplish this by means of first obtaining a Government contract. We therefore find no merit to this portion of the protest.

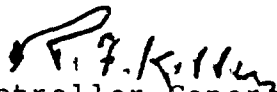
Anderson protests that bids were opened and award made in disregard of his protest. The Air Force states that this protest was not filed until just over an hour prior to bid opening and that the agency proceeded with bid opening and award because of its belief that additional delay would threaten to interrupt the performance of essential services.

The agency made an appropriate determination to proceed with award, as required by DAR § 2.407.8(b)(3) (1976 ed.). It notified our Office of its intention to award notwithstanding the protest, as required by our Bid Protest Procedures, 4 C.F.R. § 20.4 (1979). We therefore have no basis to object to that award.

Anderson further alleges that award was made to a firm other than the lowest bidder. In this respect, we note that the Air Force did in fact make award to the low responsive bidder. The apparent low bidder was found nonresponsive for failure to respond to two material amendments to the IFB.

Anderson has raised other minor subsidiary issues. We have carefully considered each of these and find them to be without merit.

The protest is denied.


Deputy Comptroller General
of the United States